IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 751 OF 2006

Mr. Keshav Ganesh Ambardekar ... Petitioner

V/s

Mr. Dharmesh Ramchandra Pandit ... Respondent

Mr. M.D. Angal for the petitioner.

Mr. D.S. Sawant for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 13TH MARCH, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The petitioner tenant has filed this petition against the order dated 5.10.2005 passed by the lower appellate Court dismissing the appeal and confirming the order passed by the Trial Court for setting aside the ex-parte decree passed in R.A.E. & R. Suit No. 816 of 1998, dated 21.7.2004.

3. The respondent landlord filed the suit against the

petitioner for eviction from the suit premises on various grounds. Though the suit summons was served and the petitioner was represented by an advocate, he did not remain present, did not file the written statement nor remained present at the time of hearing and hence the ex-parte decree came to be passed. The learned Trial Court held that the defendant had changed the user of the suit premises from residence to business. It is also held that the business premises was not used without any reasonable cause for the purpose it was let out for the continuous period of more than six months immediately preceding the date of the suit. Further it was held that the defendant had acquired suitable residential accommodation and, as such, the decree came to be passed.

While passing the decree, the Trial Court Judge thought it fit to issue directions to the plaintiff to issue notice to the defendant before execution. Accordingly the ntoice was issued, at which time the petitioner-defendant came to know about the passing of the decree ex-parte. Thereafter applications were made to the Court for setting aside the ex-parte decree and notice was moved for the said purpose.

4. The learned Trial Judge was of the view that there was no sufficient cause explained by the petitioner as to why he or his advocate remained absent and the plea of the petitioner was rejected and further directed that the plaintiff was at liberty to execute the decree.

The appeal was carried to the lower appellate Court. The lower appellate Court, after hearing both parties, was of the view that the reasoning adopted and findings recorded by the Trial Court appear to be legal and proper and as such the appeal came to be dismissed. Hence the present petition.

5. At the outset, it may be noted that Mr. Angal, the learned counsel for the petitioner candidly conceded that the application made on behalf of the petitioner to set aside the decree did not contain any ground whatsoever seeking setting aside the decree and it was the case of callous attitude of the concerned advocate. It was further argued that the petitioner is 82 years' old businessman and his livelihood would be totally ruined if the decree is allowed to be passed and ex-parte decree is allowed to be enforced.

On the other hand, it was submitted on behalf of the

respondent that the petitioner was aware of the contents of the application as it bears his own signature apart from the signature of his advocate. Therefore, it cannot lie in the mouth of the petitioner to put blame entirely on the advocate concerned. The learned counsel for the respondent also sought to put reliance on the Apex Court ruling in the case of **Salil Dutta v/s T.M. & M.C. Private Ltd., reported in JT 1993 (4) S.C. 528,** wherein it was observed that the plea for setting aside of ex-parte decree is made and it would not be proper to put the entire blame upon the advocate in order to make it out as if they were totally unaware of the nature or significance of the proceedings. In the present case, though it is correct that the advocate may or may not be guilty of an act of ommission on his part, however, it cannot be said that the petitioner himself was totally unaware of the on going proceeding especially when the application to set aside the ex-parte decree is signed by him.

6. Under the circumstances, I am of the view that the petitioner cannot be given any relief in this regard and petition stands dismissed with no order as to costs.

However, it is clarified that taking into account the

age of the petitioner and the argument that he is conducting the business in the premises for the last several years, it is hereby directed that the decree shall not be executed for the period of one year from the date of this order. For that purpose, the petitioner shall furnish undertaking to this Court that he shall not create any third party interest during the said period and that he shall continue to pay the agreed rent to the landlord during the said period. The undertaking to be furnished by all adult members of the family of the petitioner within four weeks from the date of this order.

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